

(30,187)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 320

NATIONAL PAPER AND TYPE CO., PLAINTIFF IN ERROR,

vs.

FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE
FOR THE SECOND DISTRICT OF NEW YORK

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

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[fol. 1] **IN UNITED STATES DISTRICT COURT**

WRIT OF ERROR

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the Court before you, or some of you, between National Paper and Type Co., plaintiff, and Frank K. Bowers, Collector of Internal Revenue for the Second District of New York, defendant, a manifest error hath happened to the great damage of said plaintiff as is said and appears by its complaint, we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the plaintiff as aforesaid in this behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Judges of the United States Supreme Court at the City of Washington, together with this writ, so that you have the same at the said place before the said Supreme Court aforesaid on the 31st day of March, 1924, that the record and proceedings aforesaid being inspected the said Judges of the United States Supreme Court may cause further to be done therein to correct that error, what of right and according to law and custom of the United States ought to be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 5th day of March, in the year of our Lord One Thousand Nine Hundred and Twenty-Four, and of the Independence [fol. 2] of the United States the One Hundred and Forty-Eighth.

Alex. Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

Wm. Bondy, United States District Judge.

[fol. 3] IN UNITED STATES DISTRICT COURT

NATIONAL PAPER & TYPE COMPANY

against

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of New York

SUMMONS AND SERVICE—Filed Jan. 26, 1924

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 26th day of January, A. D. 1924.

Alex. Gilchrist, Jr., Clerk. Lord, Day & Lord, Plaintiff's Attorney. Office and Post Office Address, 25 Broadway, Borough of Manhattan, New York City.

Copy of summons and complaint received January 26, 1924.

Frank K. Bowers, Collector of Internal Revenue for the Second District of New York.

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED COMPLAINT—Filed Feb. 19, 1924

The plaintiff above named, by its attorneys, Lord, Day & Lord, complaining of the above named defendant, alleges as follows:

First. That the plaintiff is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of New Jersey, with principal place of business in the city of New York in the United States, and during all of such times was and still is engaged within the United States in the business of exporting, that is to say, the purchase of personal property within the United States by said plaintiff and the sale of such personal property without the United States by said plaintiff, with capital invested in said business of exporting.

Second. That there are, and at all times hereinafter mentioned were, foreign corporations organized, authorized or existing under the laws of foreign countries, which are and were engaged in the business of exporting within the United States, that is to say, the purchase of personal property within the United States by said foreign corporations and the exportation and sale of such personal property without the United States by said foreign corporations, and that under the protection of the United States said foreign corporations have invested large amounts of capital in said business of exporting carried on by said foreign corporations within the United States; and that under Sections 217 and 233 of the Act of Congress approved November 23, 1921, known as the Revenue Act of 1921, said foreign corporations were wholly exempted from the payment of tax on the net income or profits accruing or derived from said business of exporting carried on by said foreign corporations within the United States.

Third. On information and belief, that at all the times hereinafter mentioned defendant was, and at the time of the commencement of this action is, the United States Collector of Internal Revenue for the Second District of New York, and was and is a citizen of the State of New York, and a resident of the Southern District of New York.

Fourth. That on or about the 15th day of March, 1922, the defendant, acting as such Collector of Internal Revenue, and claiming to act under and in pursuance of the provisions of Sections 230 and 205 of the Act of Congress approved November 23, 1921, known as the Revenue Act of 1921, demanded of the plaintiff the sum of Four Thousand Two Hundred Three and 91/100 Dollars (\$4,203.91), which said Collector claimed as due and payable from said plaintiff as and for one-fourth part of the income tax for plaintiff's fiscal year ending March 31, 1921, that is, for the last quarterly or [fol. 6] three-months' period of said fiscal year, or the months of January, February and March, 1921 (being such last part of the sum of \$16,796.31 paid as such tax for said fiscal year, the remainder of which sum was imposed and paid under the provisions of the Revenue Act of 1918), and claimed that the said sum of Four Thousand Two Hundred Three and 91/100 Dollars (\$4,203.91) was due and payable from said plaintiff on or before March 15, 1922, and threatened to enforce the payment of the said sum together with the penalties and interest thereon provided by the laws of Congress.

Fifth. That thereupon the plaintiff did, on or about the 15th day of March, 1922, solely in order to prevent distraint and sale of its property, and upon compulsion, and under duress and coercion, involuntarily pay to the defendant as such Collector of Internal Revenue, the said sum of Four Thousand Two Hundred Three and 91/100 Dollars (\$4,203.91), and the plaintiff, at the time of said payment, protested to the defendant in writing that no tax was due from the plaintiff and that the defendant was without authority to exact or collect the same, or any part thereof.

Sixth. Upon information and belief, that there was not on the 15th day of March, 1922, nor at any other time, any sum due from the plaintiff for, or on account of, any tax imposed by said sections of said Act of Congress, and the defendant, as such Collector of Internal Revenue, or otherwise, was without authority to exact or collect the said sum from plaintiff, or any part thereof.

Seventh. That the assessment and collection by said Collector of [fol. 7] Internal Revenue under said Revenue Act of 1921 of the amount of Three Thousand Nine Hundred Ninety-Nine and 08/100 Dollars (\$3,999.08), as and for an alleged tax on said plaintiff's net income or profits accruing or derived from said business of exporting transacted by said plaintiff within the United States was not the exertion of taxation but the confiscation or taking of plaintiff's property in violation of the Fifth Amendment of the Constitution of the United States inasmuch as under Sections 217 and 233 of said Revenue Act of 1921 said foreign corporations were wholly or entirely exempted from the payment of like tax on like net income or profits accruing or derived from the like business of exporting transacted under the protection of the United States by said foreign corporations within the United States with capital invested by said foreign corporations within the United States, which business of exporting was transacted by said foreign corporations under the same or like circumstances and conditions and in the same or like manner as said plaintiff transacted the like business of exporting within the United States that is to say, the purchase of personal property within the United States and the sale of such personal property without the United States.

Eighth. That the taxation imposed under said Revenue Act of 1921 upon the net income or profits of the plaintiff accruing or derived from the said business of exporting transacted in the United States with capital invested in the United States by said plaintiff [fol. 8] imposed a direct and immediate burden on said plaintiff's business of exporting transacted within the United States, in violation of the provisions of Paragraph 5 of Section 9 of Article I of the Constitution of the United States, inasmuch as the like net income or profits of said foreign corporations accruing or derived from the said like business of exporting transacted in the United States with capital invested in the United States by said foreign corporations was wholly exempted by said Revenue Act of 1921 from like taxation.

Ninth. That on or about the 6th day of December, 1922, the plaintiff, in accordance with the provisions of law and the regulations of the Treasury Department in such cases made and provided, made a claim and application in writing to the Commissioner of Internal Revenue and duly demanded the refund and repayment to it of the aforesaid sum of Sixteen Thousand Seven Hundred Ninety-Six and 31/100 dollars (\$16,796.31), which included the aforesaid sum of Four Thousand Two Hundred Three and 91/100 Dollars (\$4,203.91) on the ground that the said tax was illegally assessed

and collected, in violation of the provisions of the Constitution of the United States.

Tenth. That more than six months have now expired since the filing of said claim for said refund, as provided by Section 1318 of said Revenue Act of 1921, and no part of the amount of said claim has been remitted, refunded or repaid to this plaintiff, or any one, for its account.

Wherefore, plaintiff demands judgment against the defendant [fol. 9] for the said sum of Three Thousand Nine Hundred Ninety-Nine and 08/100 Dollars (\$3,999.08), together with interest thereon from March 15, 1922; together with costs and disbursements.

Lord, Day & Lord, Attorneys for Plaintiff. Office and Post Office Address, 25 Broadway, Borough of Manhattan, New York City.

Jurat showing the foregoing was duly sworn to by Harrison C. Lewis omitted in printing.

[fol. 10] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION TO DISMISS

SIR: Please take notice that upon the amended complaint herein and upon all the other papers and proceedings had herein, the undersigned will move this Court at a stated term for the hearing of motions to be held in Room 235 of the United States Courts and Post Office Building, in the Borough of Manhattan, City of New York, on the 29th day of February, 1924 at 10:30 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, for an order granting judgment dismissing the said amended complaint upon the ground that said amended complaint does not state facts sufficient to constitute a cause of action and for such other and further general relief as the Court may deem just in the premises. Dated: New York, February 27, 1924.

Yours, etc., William Hayward, United States Attorney for the Southern District of New York, Attorney for defendant. Office and P. O. address: U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

To Lord, Day & Lord, Esqs., Attorneys for Plaintiffs. Office and P. O. Address, 25 Broadway, New York City.

[fol.11]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM DECISION—Filed Feb. 29, 1924.

Motion granted on authority of National Paper & Type Company
v. Edwards, 292 Fed. 633.

Julian W. Mack, U. S. C. J.

[fol. 12]

IN UNITED STATES DISTRICT COURT

(District Court S. D. New York, May 26, 1923)

OPINION IN CASE OF NATIONAL PAPER & TYPE CO. V. EDWARDS,
COLLECTOR OF INTERNAL REVENUE

MACK, Circuit Judge:

This is a suit to recover the sum of \$183,844.14 income and excess-profits taxes assessed against the plaintiff for the fiscal year ending March 31, 1919, under sections 230, 233 and 301 of the Revenue Act of 1918 (Comp. St. Ann. Supp. 1919, secs. 6336 1/8m, 6336 1/8p, 6336 7/16aa),¹ and alleged to have been paid by the plaintiff under protest.

[fol. 13] It appears from the complaint that during the year in question the plaintiff was engaged in the business of exporting goods from the United States and of selling such goods in foreign countries. The total gross business of the plaintiff for the period was \$6,435,512.69, of which amount \$6,295,165.87 were

¹The pertinent parts of the Revenue Act of 1918 here involved are:

Sec. 230. (a) That, in lieu of the taxes imposed by section 10 of the Revenue Act of 1916, as amended by the Revenue Act of 1917, and by section 4 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation a tax at the following rates:

(1) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 236; and

(2) For the calendar year thereafter, 10 per centum of such excess amount.

Sec. 233. (a) That in the case of a corporation subject to the tax imposed by section 230 the term 'gross income' means the gross income as defined in section 213, except that: * * *

(b) In the case of a foreign corporation gross income includes only the gross income from sources within the United States, including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States.

Sec. 301 (a) That in lieu of the tax imposed by title II of the Revenue Act of 1917 but in addition to the other taxes imposed by this act, there shall be levied, collected, and paid for the taxable year 1918 upon the net income of every corporation a tax equal to the sum of the following: * * *

sales of goods by the plaintiff in foreign countries after the goods had been exported there, and \$158,346.82 were sales to export commission merchants in this country with the intent and purpose that the goods should be exported and with the result that the goods were actually exported. The validity of the taxes assessed is assailed in the complaint on two grounds: (a) That the taxes are upon exports in violation of article 1, section 9, clause 5, of the Constitution; and (b) that the taxes are unequal, discriminating, and unfair, and in consequence null and void, because the income of foreign corporations engaged in exporting goods from the United States is not subject to tax under similar circumstances. The defendant has moved for judgment on the pleadings on the ground that the facts alleged are not sufficient to constitute a cause of action.

In the light of the decision in *Peck & Co. v. Lowe*, Collector, 247 U. S. 165, 38 Sup. Ct. 432, 62 L. Ed. 1049, in which the Supreme Court held, under the Income Tax Law of 1913, that income of domestic corporations derived from the business of export was within the taxing power of Congress and was not in violation of article I, section 9, clause 5, of the Constitution, plaintiff in its brief has abandoned its attack on these taxes as in violation of this provision of the Constitution. It now concentrates its attack upon the law on the ground that, as interpreted by the Attorney General (32 Op. Attys. Gen. 336), and as enforced by the Treasury it deprives the plaintiff of property without due process of law in violation of the Fifth Amendment, because it imposes upon the plaintiff's business discriminatory and unequal burdens which are not imposed upon foreign corporations similarly situated.

It is admitted by the government that the acts of 1909 (36 Stat. 11) and 1913 (38 Stat. 166, 172), the wording of which differs slightly from that of the act of 1918, were in practice applied, at least to some extent, to foreign corporations in respect of income derived from the sale in foreign countries of goods manufactured or acquired in the United States.² It is unnecessary, however, here to consider the proper interpretation to be given to the acts of 1909 and 1913 or the act of 1918 as applied to foreign corporations, since I am satisfied of the constitutionality of the law as applied to the plaintiff, even [fol. 15] though the income of foreign corporations from like sources is construed to be exempt.

There is, as is now conceded, no question as to the power of Congress to tax the net income of domestic corporations derived from their export business. The question as to how far it is wise and proper to extend our taxing laws to foreign corporations that manufacture or acquire goods in this country, and sell them abroad, involves many economic and political considerations. These are peculiarly within the province of Congress, not the courts. It is perhaps inevitable

² It may be noted in passing that under section 217 (e) of the Revenue Act of 1921 (42 Stat. 245), income from the sale of goods produced in whole or in part within and sold without the United States is to be treated as derived partly from sources without the United States, but that income derived from the purchase of goods within and their sale without the United States is to be treated as derived entirely from the country in which sold.

not only that the rate of taxation should vary in different countries, but that there should be some laps and some gaps in the adjustment of the revenue laws of the various countries to foreign trade. It may happen for a time that income from some transactions may escape all taxation, while other income may have to bear its tax in more than one country. But a nation that attempts to reach out too far in the direct or indirect taxation of foreign trade may invite retaliation and reprisal. So long as the tax on American corporations is measured by net income actually realized, it is difficult to see that the American corporations are seriously handicapped in competing for any particular contracts, even if it could be assumed that foreign competitors were subject to no equivalent taxation by their own governments. Clearly, however, such a handicap or discrimination does not make the classification such a grave abuse or oppression as to condemn the law as a denial of due process within the Fifth Amendment. For to bring it within this condemnation it must be, as the Supreme Court says in *Brushaber v. Union Pacific R. R. Co.*, 240 U. S. 1, 24, 25, 36 Sup. Ct. 236, 244 (60 L. Ed. 493, L. R. A. 1917D, 414, Ann. Cas. 1917B, 713):

[fol. 16] "A case where although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property; that is, a taking of the same in violation of the fifth amendment, or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion."

In *La Belle Iron Works v. United States*, 256 U. S. 377, 392, 393, 41 Sup. Ct. 528, 532 (65 L. Ed. 998) the court again points out:

"The Fifth Amendment has no equal protection clause, and the only rule of uniformity prescribed with respect to duties, imposts, and excises laid by Congress is the territorial uniformity required by article 1, sec. 8. * * * The difficulty of adjusting any system of taxation so as to render it precisely equal in its bearing is proverbial, and such nicety is not even required of the states under the equal protection clause, much less of Congress under the more general requirement of due process of law in taxation. * * * The act treats all corporations and partnerships alike, so far as they are similarly circumstanced. * * * If in its application the tax in particular instances may seem to bear upon one corporation more than upon another, this is due to differences in their circumstances, not to any uncertainty or want of generality in the tests applied."

Defendant's motion for judgment on the pleadings is granted.

[fol. 17]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISMISSING BILL OF COMPLAINT—Filed Feb. 29, 1924

Defendant herein having moved for judgment dismissing the amended complaint herein upon the ground that said amended complaint does not state facts sufficient to constitute a cause of action and for such other and further relief as to the Court in the premises may seem proper, and said motion having duly come to be heard:

Now, after hearing Thomas J. Crawford, Assistant United States Attorney for the Southern District of New York, of counsel for defendant, in support of said motion and Franklin Grady, Esq., of counsel for plaintiff in opposition thereto, and due deliberation having been had thereon, on motion of William Hayward, United States Attorney for the Southern District of New York, attorney for defendant, it is

Ordered that the said motion be and the same hereby is in all respects granted, and it is

Further ordered that defendant have final judgment against plaintiff herein dismissing the amended complaint upon the merits and for his costs to be taxed.

Julian W. Mack, United States Circuit Judge.

[fol. 18]

IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed March 1, 1924

Defendant's motion for judgment dismissing the amended complaint herein upon the ground that said amended complaint herein did not state facts sufficient to constitute a cause of action, having duly come on to be heard before the Honorable Julian W. Mack, United States Circuit Judge, at a stated term of this Court held on the 29th day of February, 1924, and Thomas J. Crawford, Assistant United States Attorney for the Southern District of New York, of counsel for the defendant having been heard in support of said motion and Franklin Grady, Esq., of counsel for the plaintiff, having been heard in opposition thereto and due deliberation having been had thereon and the Court having handed down its memorandum on the said 29th day of February, 1924, granting said motion, and an order having been duly made and entered on the 29th day of February, 1924, granting defendant's motion and directing that the defendant have final judgment against the plaintiff herein dismissing the amended complaint upon the merits and for his costs to be taxed and the cost of said defendant having been taxed in the sum of \$11.10.

Now, on motion of William Hayward, United States Attorney for [fol. 19] the Southern District of New York, attorney for defendant, it is

Adjudged that the amended complaint herein be and it hereby is dismissed upon the merits and that defendant have and recover of the plaintiff the sum of \$11.10 his costs as taxed and that said defendant have execution against the plaintiff therefor.

Judgment signed this 1st day of March, 1924.

Alex. Gilchrist, Jr., Clerk.

[fol. 20]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed March 5, 1924

The petition of National Paper & Type Company, the Plaintiff herein, respectfully shows that on or about the 1st day of March, 1924, judgment was duly entered in this Court in this cause in favor of the Defendant and against the Plaintiff dismissing the complaint, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this Plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the Supreme Court of the United States.

Lord, Day & Lord, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 21]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 5, 1924

Now comes the Plaintiff above named and files the following assignment of errors upon which it will rely in its appeal from the judgment entered on the first day of March, 1924.

First. That the Court erred in holding that the amended complaint did not state facts sufficient to constitute a cause of action; and in granting the Defendant's motion for judgment on the pleadings.

Second. That the Court erred in holding that the Congress of the United States may arbitrarily tax the net income or profits of the Plaintiff accruing or derived from the business of purchasing and exporting personal property from the United States for sale without the United States by the Plaintiff when the like net income or profits of foreign corporations, accruing or derived from the like business of exporting transacted by said foreign corporations within the United States under the protection of the United States with capital invested within the United States in said business by said foreign corporations, is wholly exempted from like taxation [fol. 22] by the Congress of the United States.

Third. That the Court erred in holding that the alleged tax imposed by the Congress of the United States on the net income or profits of the Plaintiff accruing or derived from the business of exporting personal property purchased by the Plaintiff within the United States for sale without the United States by the Plaintiff was not the confiscation or taking of Plaintiff's property in violation of the Constitution of the United States when the like net income or profits of foreign corporations accruing or derived from the like business of exporting transacted within the United States by said foreign corporations with capital invested within the United States by said foreign corporations, under the same or like circumstances and conditions and in the same or like manner as the Plaintiff transacted the said like business of exporting, was wholly exempted from like taxation by the Congress of the United States.

Fourth. That the Court erred in holding that the tax imposed by the Congress of the United States upon the net income or profits of the Plaintiff accruing or derived from the business of exporting transacted within the United States by the Plaintiff did not impede and discourage the Plaintiff's said business of exporting and thereby impose upon said business of exporting a direct and immediate burden in violation of the Constitution of the United States when the like net income or profits of foreign corporations accruing or derived from the said like business of exporting transacted within [fol. 23] the United States by said foreign corporations with capital invested in said like business within the United States by said foreign corporations was wholly exempted by the Congress of the United States from like taxation.

Wherefore, Plaintiff-Appellant prays that the said judgment may be reversed and the motion granted to dismiss the amended complaint overruled, and for such other and further relief as to the Court may seem just and proper.

Lord, Day & Lord, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 24] IN UNITED STATES DISTRICT COURT
STATEMENT RE BOND ON APPEAL

The plaintiff furnished a bond in the sum of \$250, conditioned for the prosecution by it of the Writ of Error herein.

The surety on said bond is American Surety Company.

Said bond was approved on March 5, 1924, by the Hon. Wm. Bondy, D. J., and filed with the Clerk of the District Court of the United States for the Southern District of New York on March 5, 1924.

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed March 5, 1924

This 5th day of March, 1924 comes the Plaintiff by its attorneys, and files herein and presents to the Court its petition praying for the allowance of writ of error and assignment of errors intended to be urged by it, praying also that a transcript of record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the Court does allow the writ of error upon the Plaintiff giving bond according to law in the sum of Two Hundred and Fifty Dollars (\$250.00) which shall operate as a supersedeas bond.

Wm. Bondy, D. J.

[fol. 26] CITATION—In usual form, showing service on William Hayward; filed March 7, 1924; omitted in printing

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed that the foregoing pages, numbered 1 to 26, inclusive, contain a true and complete transcript of the record and proceedings had in the United States District Court for the Southern District of New York, in the cause of National Paper & Type Company, Plaintiff in Error, against Frank K. Bowers, Collector of Internal Revenue for the Second District of New York, De-

fendant in Error, as the same remain of record and on file in the office of the Clerk of said Court.

Dated New York, March 7th, 1924.

Lord, Day & Lord, Attorneys for Plaintiff in Error. Wm. Hayward, United States Attorney, Attorney for Defendant in Error.

[fol. 28] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the foregoing pages, numbered 1 to 27 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of National Paper & Type Co., Plaintiff in error, against Frank K. Bowers, Collector of Internal Revenue for the Second District of New York, Defendant in error, as the same remain of record and on file in said office as agreed upon by the parties.

In testimony whereof I have caused the seal of said Court to be hereunto affixed at the City of New York, in the Southern District of New York, in the Second Circuit, this 7th day of March, in the year of our Lord One Thousand Nine Hundred and Twenty-Four and of the Independence of the United States the One Hundred Forty-Eighth.

Alex. Gilchrist, Jr., Clerk. (Seal of the District Court of the United States, Southern District of N. Y.)

[fol. 29] [Endorsed:] L. 32/383. United States District Court, Southern District of New York. National Paper & Type Company, Plaintiff, against Frank K. Bowers, Collector of Internal Revenue for the Second District of New York, Defendant. Transcript of Record. Lord, Day & Lord, Attorneys for Plaintiff in Error, 25 Broadway, New York.

Endorsed on cover: File No. 30,187. S. New York D. C. U. S. Term No. 320. National Paper and Type Co., plaintiff in error, vs. Frank K. Bowers, collector of internal revenue for the second district of New York. Filed March 11th, 1924. File No. 30,187.